10 S.B. CIVIL MISC. APPEAL NO.188/2007
(Bheema Vs. Koopanlal & ors.)

Date of Order :: 2nd April 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. M.K.Trivedi for the appellant.

For quantification of compensation to be awarded to the claimant for the loss suffered by him due to an injury sustained in a vehicular accident of fracture of right femur bone, the Tribunal has noticed his age at 45 years, has referred to the bills of medical expenditure and has allowed an amount of Rs.28,400/- as against the bills of Rs.28,389/-; has further allowed Rs.5,000/- for one grievous injury as noticed from the injury report Ex.5; and then has allowed Rs.61,000/- with reference to 23% disablement as stated in the medical examination report Ex.21. In this manner, the Tribunal has assessed total loss for the claimant in the sum of Rs.94,400/- and while making the award in this amount, has allowed interest at the rate of 6% per annum.

Questioning the award aforesaid as being low and inadequate, learned counsel for the appellant strenuously contended that the Tribunal has not allowed reasonable compensation on the relevant heads inasmuch as no amount has been allowed: (i) towards transportation, though the claimant was required to be transported to Dahod (Gujarat)

from Kushalgarh (Banswara) for treatment; (ii) for special diets and attendants; and (iii) for loss of income for four months in spite of the evidence regarding long drawn treatment. The submissions so made have only theoretical value.

In this case, it is noticed that the claimant, about 45 years of age and said to be working as a labourer and in agriculture, suffered one injury of fracture of shaft of right femur bone but it does not appear that the injury has led to any such disablement as to deprive him of his earnings or even to retard or restrict his earning capacity. The doctors concerned issuing medical certificate Ex.21 have also issued muscle examination chart Ex.21A and it appears that it is with reference to 9% restriction or retardation at the hip; 9% at the knee; and 5% disability with reference to ½ inch shortening that the doctors have stated about 23% disablement. However, such disablement can only be referred to the limb and cannot be treated as disability to the whole body nor manifests into the loss of earning capacity.

The claimant has produced a copy of his 'Indoor Case Paper' maintained by Zainab Nursing Home as Ex.6 but the same does not appear to be complete as it only shows the clinical findings on the date of admission i.e., 03.05.2004 and the treatment then administered; but not the particulars of follow-up treatment and the condition at the time of discharge. The Tribunal has rightly commented that the claimant has not

produced relevant documents about the place and duration of his treatment so as to consider the components of other expenditure.

In the overall facts and circumstances of the case, this Court is of opinion that even if the Tribunal has not segregated the components of compensation for transportation, special diets, attendants and loss of income as such, the entire of such components taken together with the component of non-pecuniary loss cannot stand beyond Rs.61,000/- as already allowed by the Tribunal. There appears no scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

MK **[DINESH MAHESHWARI],J.**